

MINUTES
UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING
Utah Department of Environmental Quality
168 North 1950 West, Building #2, (Conf. Room 101), SLC, Utah

September 8, 2005

Board Members Present: John Newman (Vice-Chair), Scott Bruce, Michael Brehm, Carlton Christensen, Kory Coleman, William Doucette, Gary Mossor, Kevin Murray, Dennis Riding.

Staff Members Present: Dennis Downs (Executive Secretary), Brad Johnson (Executive Secretary UST), Scott Anderson, Tom Ball, Therron Blatter, Edward Costomiris, Marty Gray, Rusty Lundberg, Brad Maulding, Dale Marx, Rick Page, Cheryl Prawl, Doug Taylor, Don Verbica, Otis Willoughby, Raymond Wixom.

Others Present: R. Jason Reed, Tye Rogers, Gene Curtis, Ben Martinez, Sean McCandless, Jason Groenewold, George Gooch, Chris Lilley, Shawn Raju, Chris Falkenberg, Wendy Lessig, Clint Warby, Jeff Coombs, Walton Levi, Sheila Vance.

I. The meeting was called to order at 1:05 p.m.

John Newman (Vice-Chair) conducted the meeting. Craig Anderson (Chairman), Dianne Nielson and Craig Forster were excused from the meeting. Kevin Murray was excused from the meeting at 2:00 p.m.

Dennis Downs apologized for some Board members not receiving their electronic copy of the Board packet. Mr. Downs stated that due to the volume of materials sent out electronically, some Board members did not receive their Board packet. Mr. Downs stated that problem has been corrected. However, if Board members do not receive their packet, either electronically or a hard copy version, approximately one week prior to the Board meeting, they should contact Arlene Lovato, Administrative Secretary.

II. Approval of minutes for the July 14, 2005, Board meeting (Board Action Item)

It was motioned by William Doucette and seconded by Kory Coleman and unanimously carried that the July 14, 2005, Board Meeting minutes be approved.

III. Utah Water Research Laboratory Presentation (William Doucette)

William Doucette made a presentation on the Utah Water Research Laboratory (UWRL). (A copy of the presentation is available with the meeting minutes.)

Mr. Doucette stated that due to time constraints in touring the UWRL in conjunction with the June 9, 2005 Board meeting, information on the various other types of research and activities performed at the UWRL was not presented to the Board. Mr. Doucette thanked Board members for the opportunity to present the additional information.

The UWRL is located on the Logan River. The UWRL is part of Utah State University in the College of Engineering. The State legislature authorized the construction of the UWRL facility in 1959. The building was completed in 1965. The Environmental Quality Laboratory, located on the top floor, was added in 1980. Funding sources include the following agencies: the State of Utah, the National Science Foundation and various other federal organizations. The UWRL mission is to conduct research on multimedia water problems of state, national, and international scope. The source and amounts of funding include: State appropriations and mineral lease funding in the amount of approximately \$2.7 million; USGS funding is approximately \$143 K per year; other contracts and grants and in-kind contributions provide \$7 million; total expenditures is approximately \$10 million. Support for graduate and under graduate students is approximately \$500 K.

The hydraulics bay is approximately 50,000 ft² in size. The environmental quality lab is approximately 12,000 ft². There are three groups within the water lab: (1) hydraulic engineering group (2) water resources engineering, and (3) environmental engineering. The water resource engineering works on water demand and supply projections, groundwater managements and yield analysis, mining impacts, forecasting of Great Salt Lake water levels, dam safety, GIS capabilities for terrain stability mapping, aquifer storage, and development of near real-time control of algorithms for controlling large scale water systems. In the environmental quality lab, air quality issues are reviewed including inversions that take place in Cache Valley, air monitoring, computer modeling, and data visualization. A group is also dedicated to managing water resources for the protection of endangered species, water quality monitoring and instrumentation.

Various water quality issues are also addressed, such as abandoned mines and the remediation of those mines, bio-remediation of TCE in groundwater, phytoremediation, the method of using plants to treat contaminated ground water, and drinking water treatment dealing with arsenic removal, etc. On-site water treatment, bioremediation of contaminated soils, integrated river basin planning and management, dam safety risk assessment and management, in-stream flow/fish habitat modeling and assessment and water distribution were also briefly discussed. Additional information can be found at <http://www.engineering.usus.edu/uwrl/> or contact Bill Doucette at 797-3178, doucette@cc.usu.edu.

Carlton Christensen asked if the schedule for entities wanting projects/tests is ongoing. Mr. Doucette stated that generally they are constantly busy. For the most part, when the tear down of one project begins, the construction planning process for the next is beginning. Mr. Doucette stated the University does not generate a profit on the projects. The University collects 40% overhead for each project that is done at the UWRL and those funds go to a variety of grant matches. The University is not supposed to compete with the private sector. As such, every project that is accepted is scrutinized to ensure that there isn't a local business that would be better suited to do the project than the University. Dennis Downs asked how many graduate students go through the program. Mr. Doucette stated that there are about thirty full-time faculty members and about 120 graduate students in this facility. The UWRL gives these students great experience.

IV. Underground Storage Tanks Update

A. Energy Bill Update (Informational Item)

Therron Blatter, UST Section Manager for the Division of Environmental Response and Remediation (DERR), informed the Board members that on July 29, 2005, Congress officially passed the Energy Policy Act of 2005. Subsequent to this, the President then signed the Bill on August 8, 2005, for final adoption. Included in this Bill was a section that dealt with new standards and laws required for the compliance of Underground Storage Tanks (USTs). Utilizing a Power Point presentation, Mr. Blatter gave an overview of these new standards and laws, and how they will affect the UST Program in the future for the State of Utah. (A copy of this presentation is available at the DERR offices.)

Michael Brehm asked what the intent was behind the requirement to have individual states provide the Environmental Protection Agency (EPA) with a report detailing compliance of all USTs owned by federal, state, or local government. Mr. Blatter stated that a few years ago, an audit was conducted on government owned tanks in which it was found that some of the tanks were not in compliance as much as they should be. This new requirement will help ensure that governmental agencies do a better job keeping their tanks in compliance.

John Newman then inquired if federally owned tanks were subject to state regulations in the past and if the requirement to submit specific reports on these facilities to the EPA and Congress would usurp that authority. Mr. Blatter explained that the federally owned tanks were subject to state regulations, but that it would not negate the state regulations as there is a section of the Bill that waives governmental immunity to these laws.

Carleton Christensen continued on by asking if privately owned tanks also had to submit these specific reports to the EPA. Mr. Blatter stated that the state would continue with submitting reports with generic numbers as they have in the past and that they would not be required to submit these reports with specific site information.

Dennis Riding inquired if Leaking Underground Storage Tank (LUST) Trust funds are federal money and if there is any federal funds available for conducting compliance inspections. Mr. Blatter explained that LUST-Trust funds are federal money and that in the past, could not be used for compliance inspections. However, under the new law, it is now available to be used for compliance inspections. The DERR also receives a small portion of Core money from the EPA that is available to fund these inspections.

Mr. Riding then asked if secondary containment for groundwater protection is intended for retro-fitting of old tanks, or is it a requirement for the installation of new tanks. Mr. Blatter stated that this requirement was for new installations only.

Mr. Brehm then continued on by asking if the DERR has estimated what the cost impact of these new requirements will be for the state. Mr. Blatter explained that the cost impact had not been estimated as of yet, but that it would be done in the future. Also, most of the requirements set forth in the Bill will not be difficult to implement as the state is already doing them in one form or another. The only requirement that is not already implemented by the state is the owner/operator training.

B. PST Fund Status (Informational Item)

Brad Johnson informed the Board members that on July 20, 2005, a meeting of the Agriculture/National Resources/Environment Legislative Interim Committee (Committee) was held. In that meeting, it was proposed to the Committee that “draft” legislation be developed to require UST owners/operators to have all or none of their tanks on the Petroleum Storage Tank (PST) Fund. The Committee passed this motion to direct the DERR to prepare that language. It is anticipated that in either the October or November meeting of the Committee, the DERR will present that “draft” language. It is also anticipated that at that time, the Committee will approve a Committee Bill to be included in the 2006 Legislative Session.

C. Privatization Policy Board (Informational Item)

Mr. Johnson continued on by stating that also during the Committee meeting, one of the Committee members made a motion that the Committee refer the PST Fund issue to the Privatization Policy Board (Privatization Board), which was established by statute back in the 1980s. The responsibility of the Privatization Board is to review various government functions to determine if they could be dealt with in a more efficient or cost effective manner by the private sector. Mr. Johnson added that he has conferred with Douglas Richins, the Executive Secretary for the Privatization Board, about this issue and that it is anticipated in their next meeting scheduled for September 28, 2005, the Privatization Board will appoint a sub-committee to look at this topic in more detail. At that time, it will be Mr. Johnson’s suggestion that the Utah UST Advisory Task Force be the forum to look at this issue as it has representation from various stakeholders in the program. Mr. Johnson will keep the Board updated on this issue.

Kevin Murray asked as to what exactly the sub-committee will be looking at when looking into this issue. Mr. Johnson explained that the sub-committee would only be looking at the administration of the PST Fund. At this time, approximately 10 states within the nation have taken the management of their funds and given it to a private entity, which acts as an insurance agency. However, there are varying degrees of success with these private entities managing the administration of the individual state’s fund.

Mr. Riding inquired if there was a feel as to how the Utah State Legislature will receive the recommendation from the sub-committee. Mr. Johnson pointed out that he does not know how the Legislature will receive this issue, but that the Privatization Board does not have any statutory authority. They can only make recommendations to the Legislature.

Mr. Christensen then asked if privatization was considered when the PST Fund was established. Mr. Johnson stated that privatization was not considered at the time the fund was created, but that it has been an issue that has come up within the last few years.

V. Used Oil Section

Proposed Stipulation and Consent Agreement between the Board and Thermo Fluids, Inc. (Informational Item)

Cheryl Prawl informed the Board of the Proposed Stipulation and Consent Order No. 0507020 (SCO) between the Board and Thermo Fluids, Inc. Thermo Fluids, Inc. is currently permitted as a used oil processor, transporter, and marketer in Utah. On February 23, 2005, a complaint was received by the Division stating that Thermo Fluids was currently operating out of its new used oil processing facility that had not yet been permitted by the Executive Secretary. Division inspectors investigated and confirmed that used oil was being stored at the unpermitted facility. This discovery led to the issuance of a Notice of Violation No. 0504012 (NOV) on July 19, 2005 for operating a used oil processing facility without a permit. Thermo Fluids management admitted that it knowingly filled the tanks in the unpermitted facility. Thermo Fluids had a customer who had a large amount of oil that needed to be stored and because Thermo Fluids' other tanks at its existing facilities were filled, they had no other option but to store the oil in tanks at the un-permitted facility. Thermo Fluids did obtain a permit for the new Salt Lake City used oil-processing facility on June 17, 2005.

To resolve the NOV, a proposed SCO has been negotiated with Thermo Fluids. Under the terms of the proposed SCO, Thermo Fluids will pay a penalty of \$15,660. This penalty amount includes an extra 10% penalty for the willfulness of storing the oil and knowingly filling the tanks in the unpermitted facility despite knowing it was a violation of the used oil rules. Also, this penalty amount includes an additional 10% penalty for Thermo Fluids' history of non-compliance. Thermo Fluids was issued an NOV in 2002 for storing used oil in unpermitted tanks at its permitted facility in Woods Cross, Utah.

A 30-day public comment period on the proposed SCO is scheduled from August 30, 2005 to September 28, 2005.

Michael Brehm asked what would be an alternative approach for this type of company if they find themselves in this type of situation in the future, i.e., would a variance request be an option? Ms. Prawl stated that Thermo Fluids did ask for a variance after the problem was discovered. Unfortunately, in the Used Oil Management Act and the Rules, there is not an option to request a variance request. The Hazardous Waste Rules do allow for a variance, but the Used Oil Rules do not. William Doucette asked if this was a business decision, i.e., figuring they would make more money than they would get fined. Ms. Prawl stated that the business decision was probably a factor in Thermo Fluids decision to accept the used oil. Thermo Fluids had stated that they didn't want to lose the existing customer they had. Carlton Christensen asked if 10% is considered a penalty and are there any figures that show if the additional 10% penalty took away all the profits made, etc. Ms. Prawl stated that information is not available, as the used oil market fluctuates so much it would be difficult to determine the profit that would have been made from this transaction.

VI. Hazardous Waste Facilities

ATK Thiokol – Bacchus Works (ATK-Bacchus), request for a Variance (Board Action Item)

Brad Maulding reviewed the information regarding a request for a variance submitted to the Executive Secretary by ATK Thiokol – Bacchus Works on June 17, 2005. ATK-Bacchus is a solid rocket manufacturing facility located in West Valley City, Utah. As part of their operations, they generate waste that they open burn at their facility on-site. Early in the year some of the waste that was generated, part of the rocket manufacturing operations, caused problems as unplanned detonations occurred. Due to that issue, ATK-Bacchus is reviewing their treatment protocols and performing tests to determine what has been causing the detonations to occur. After the last event, ATK-Bacchus began an internal safety evaluation of the treatment procedures for this waste stream and began testing to revise the treatment protocols. While ATK-Bacchus has made significant progress in developing safe treatment protocols for this waste, the last round of testing indicated that some additional tests were needed. If granted, this variance will let ATK-Bacchus store waste ingredient slum, a reactive hazardous

waste, longer than the one-year limitation imposed by the Land Disposal Restrictions (LDR). The purpose for this variance is to allow ATK-Bacchus to complete the development of improved treatment protocols for this waste stream. The waste ingredient slums are generated during normal manufacturing operations at the ATK-Bacchus facility. These waste ingredient “slums” consist mainly of aluminum powder and ammonium perchlorate, but may also include other reactive ingredients. It is anticipated the variance request will be for a maximum of one-year or as long as it takes for ATK Thiokol to complete their testing activities.

The public comment period began on July 7, 2005, and ended on August 10, 2005. In conjunction with this comment period, the Division held a public hearing at the Magna Library on August 8, 2005. No comments were received.

William Doucette asked for clarification regarding the timeframe for the variance. Mr. Maulding stated that the Division is looking at a one-year timeframe as the maximum amount of time allowed for the variance. If ATK-Thiokol completes their testing activities prior to that, then the variance would end at that time.

It was motioned by Carlton Christensen and seconded by Gary Mossor and unanimously carried that ATK Thiokol – Bacchus Works (ATK-Bacchus), June 17, 2005, request for a Variance be approved.

VII. Commercial/Federal Facilities

A. Stipulation and Consent Order between the Board and the Utah Test and Training Range (US Air Force) (Board Action Item)

Don Verbica reviewed the information regarding the proposed Stipulation and Consent Order (SCO), No. 0503010, to resolve Notice of Violation (NOV) No. 0411034 issued to the United States Air Force, Utah Test and Training Range on February 16, 2005. Violations included failing to apply, in a timely manner, for an emergency treatment permit for range clean-up of munitions; failure to submit a written waste minimization statement; failure to provide a certification statement on reports and correspondence and failure to provide an authorized signature on reports and correspondence.

All violations have been resolved, and the SCO includes a penalty of \$5,720.00.

The public comment period began June 28, 2005, and ended on July 27, 2005. No comments were received. The Division recommends approval by the Board on this matter.

It was motioned by William Doucette and seconded by Dennis Riding and unanimously carried that the proposed Stipulation and Consent Order No. 0503010 to resolve the Notice of Violation No. 0411034 issued to the Utah Test and Training Range (US Air Force) on February 16, 2005, be approved.

B. Stipulation and Consent Order between the Board and Envirocare of Utah, LLC (Board Action Item)

John Newman (Vice-Chair) stated that because some Board members did not receive their Board packet and the following information was provided in the packet, if Board members felt that additional time was needed to address this issue it could be tabled. (There was no Board meeting in August, so this information has not been presented previously to the Board as an informational item.)

Don Verbica explained the proposed Stipulation and Consent Order (SCO) to resolve the Notice of Violation/Compliance Order (NOV/CO) issued to Envirocare of Utah, Inc. on May 3, 2005.

The NOV/CO discusses two violations relating to improper storage of containers of waste, bags, and debris. Violation 1 describes about 500 boxes, several bags and debris stored in unapproved areas for longer than 48 hours. Violation 2 describes placing waste above temporary cover over the maximum allowable height. These two violations were not self-identified, but were discovered by DSHW personnel on January 31, 2005.

The violations have been resolved and the SCO includes a penalty of \$18,800.

The public comment period began on August 2, 2005, and ended on September 1, 2005. No comments were received.

Mr. Doucette asked about the type of waste. Mr. Verbica stated the waste was in containers that had been treated. The issue was that the waste was placed above the temporary cover over the maximum allowable height and waste was stored outside approved storage areas. Board members asked for clarification regarding the amount of the penalty. Mr. Doucette stated that information provided indicated the waste was treated, improperly stored above the allowable height, and asked if the amount of waste stored outside the approved storage areas was a substantial volume and if that was the basis for the penalty amount. Mr. Verbica stated that approximately 500 containers were stored outside the approved storage areas and that was taken into consideration when the penalty was calculated.

It was motioned by Gary Mossor and seconded by Carlton Christensen and unanimously carried that the proposed Stipulation and Consent Order to resolve the Notice of Violation issued to Envirocare of Utah, LLC., dated May 3, 2005, be approved. Michael Brehm abstained from voting.

C. Envirocare request for a site-specific treatment variance for waste generated in a uranium enrichment project (Board Action Item)

Don Verbica reviewed the Envirocare of Utah, Inc. June 23, 2005, request to the Executive Secretary for a one-time, site-specific treatment variance from the Utah Hazardous Waste Management Rules.

The Mixed Waste Facility proposes to receive a waste stream from a generator that carries the waste codes for cadmium (D006), chromium (D007), lead (D008), selenium (D010), and spent solvents (F002). The original information submitted to the Board was incorrect and indicated that there is up to 350 cubic feet of this waste. The correct amount is 1,400 cubic feet of this waste. This waste was generated in a uranium enrichment project wherein highly enriched ash was created through a low-temperature thermal process and then the uranium was recovered through solvent extraction. The residual waste from this extraction process was collected in sealed cans. These one-gallon cans were combined in groups of three into larger containers and surrounded by a cement grout.

Stabilization is the standard treatment process used on a characteristic metal waste to meet Land Disposal Restrictions. Thermal treatment is required for the spent solvents. The treatment variance request, if approved, would allow Envirocare to use an alternate treatment process to treat this waste. Macroencapsulation is a permitted treatment process for hazardous waste debris, such as these cans. Using macroencapsulation on this waste would significantly reduce the leachability of this waste and thereby meet the Land Disposal Restrictions. Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the Envirocare Mixed Waste Facility.

A public comment period on this variance request began on July 7, 2005, and ended on August 5, 2005. No public comments were received. The Division recommends approval by the Board on this matter.

Michael Brehm stated that the Board was hopeful this would happen this year or before the end of the fiscal year, and asked if that is possible even with the delay of the Board not meeting in August. Mr. Verbica stated that all the information he has received indicates that the plan is to have the waste handled before the end of the fiscal year.

It was motioned by William Doucette and seconded by Michael Brehm and unanimously carried that Envirocare request for a site-specific treatment variance for waste generated in a uranium enrichment project, dated June 23, 2005, be approved.

D. Stipulation and Consent Order between the Board and Clean Harbors, Clive Facility (Northeast Casualty Real Property) (Board Action Item)

Don Verbica reviewed the proposed Stipulation and Consent Order (SCO) No. 0503009 to resolve the Notice of Violation/Compliance Order (NOV/CO) No. 04012041 issued to Northeast Casualty Real Property's (Clive Facility) on February 11, 2005.

Violations included the following: storing LDR regulated waste longer than one year; failing to unload hazardous waste within ten days of arriving at the facility; failing to transfer waste from a container in poor condition to a container in good condition; failing to adequately clean up spills of solid hazardous waste; failing to accurately record the location of containers in storage in the operating record; failing to maintain the site alarm in good operating condition; failing to follow the inspection schedule; and, failing to follow manifesting requirements.

The violations have been resolved. The SCO includes a penalty of \$34,250.00.

A public comment period was held from June 23, 2005, through July 22, 2005. No comments were received. The Division recommends approval by the Board on this matter.

Don Verbica clarified that the violations were for over a year period of time. The company did have some challenges as the company had changed the way that they tracked their waste. They had brought in a lot of vans and a lot of the vans went to the Clive Facility and ended up being stored longer than the ten-day time frame allowed, causing multi-day issues to be dealt with. Clean Harbors has fixed their tracking system and they are currently tracking their waste correctly.

It was motioned by Michael Brehm and seconded by Carlton Christensen and unanimously carried that the proposed Stipulation and Consent Order No. 0503009 to resolve the Notice of Violation No. 04012041 issued to Northeast Casualty Real Property (Clive Facility), dated February 11, 2005, be approved. Gary Mossor abstained from voting.

E. Stipulation and Consent Order between the Board and Clean Harbors, Aragonite Facility (Board Action Item)

John Newman (Vice-Chair) again stated that because some Board members did not receive their Board packet and the following information was provided in the packet, if Board members felt that additional time was needed to address this issue it could be tabled. (There was no Board meeting in August, so this information has not been presented previously to the Board as an informational item.)

Don Verbica explained the proposed Stipulation and Consent Order (SCO) to resolve a Notice of Violation and Compliance Order (NOV/CO) issued to Clean Harbors Aragonite on February 4, 2005. Mr. Verbica stated that a number of the violations identified are due to the tracking system that Clean Harbors had implemented. Also, around this same time period, Clean Harbors Corporation requested that the Aragonite Facility become more of a super center/transfer facility. Therefore, the facility received more waste than it intended to incinerate. Instead, it was to be boxed up and then sent off to other locations within the Clean Harbors Company for treatment.

The NOV/CO covered a period of inspections from October 2003 through September 2004. Violations included the following: placing incompatible wastes in the same container; failing to unload transport vehicles within ten days of receipt; failing to attempt to reconcile manifest discrepancies and make the proper notifications; holding rejected wastes on site for longer than 30 days, and failing to properly identify waste to be rejected in the waste tracking system; storing compressed gas cylinders in areas not permitted for such storage; failing to secure compressed gas cylinders to prevent falling; accumulating hazardous waste in containers for longer than 90 days, improperly labeling and dating containers, having open containers, and failing to accumulate hazardous waste in containers; failing to properly stack containers; failing to track wastes properly; storing wastes in areas prohibited from storage; failing to refrigerate infectious waste; failing to use securely sealed containers for handling infectious waste; improper characterization of infectious waste; failing to document waste characterization procedures; failing to have inventory sheets for lab packs; failing to properly label and mark containers which

have been accepted; storing wastes which have not yet been accepted in an area not designated for such storage; failing to properly document the storage date, and exceeding the time allowed in temporary storage; failing to monitor the positive pressure sections of the closed vent system; failing to maintain a database of all required equipment, failing to maintain drawings that show the approximate location of each piece of equipment, and failing to properly mark all equipment; blocking a fire door; failing to maintain emergency equipment in good condition; failing to provide an interlock to automatically shut off the robberoller vacuum pump; failing to maintain and operate the robberoller vent in a manner that minimizes the possibility of a fire or explosion; failing to minimize fires in the drum dumping system; and overfilling the small sludge tank.

The violations have been resolved and the SCO includes a penalty of \$114,912.00. The facility has accepted this penalty amount.

The public comment period began on July 26, 2005, and ended on August 25, 2005. No comments were received. The Division recommends approval by the Board on this matter.

Rick Page stated that Division personnel typically go to this facility once a week and the violations were for findings of over a year's period of time. Mr. Verbica stated that Division personnel visit the facility approximately fifty-two times a year. Michael Brehm requested a general statement from a representative of the facility, as the penalty amount is large and the findings were numerous. Chris Lilley, Environmental Compliance Manager for Clean Harbors, stated that this year has been a difficult one. Mr. Lilley further stated that a change in the business model for the facility has taken place. Clean Harbors has gone from a facility that just did incineration to collecting waste from the western states and redistributing that waste back out to their other facilities. At the same time that took place, a change of the computer system was initiated to a change to the Clean Harbors system where by the whole company could communicate on one system nationwide. When the changeover happened at Aragonite, it created problems that were not anticipated, such as infrastructure problems with the communication speed and connection problems, and timeframes where they could not make a connection and waste could not be incinerated or waste could not be shipped/received in. As a result of the above stated issues, two primary violations occurred which included failing to unload transport vehicles within ten days, because the computer system could not generate bar codes, paperwork, etc. to process the waste correctly.

The State of Utah was informed of the problem and was involved in the system changes as they were identified. The "bugs" in the system have been worked out and Region VIII has visited the facility and performed a 100% audit of the container locations, where they checked approximately 100 drums to ensure they were in the proper location, etc. The findings were that the drums were stored appropriately. A massive amount of changes have been initiated to correct the violations. Shawn Raju, General Manager, further stated that the violations are not normal business practices for this facility and feels confident that the facility is now handling the waste appropriately. A number of internal controls have been initiated to ensure that these violations do not reoccur. Carlton Christensen asked if the violations do reoccur, would the penalty amount be doubled, and what is the incentive to ensure the facility stays in compliance. Rick Page stated that there is a provision in the penalty policy where if, previous violations have occurred, the penalty amount has been increased. Some violations have happened in the past and therefore the penalty has been increased.

Dennis Riding asked if Division staff is seeing a better tracking system. Rick Page stated that the Division is seeing a better tracking system at the facility. John Newman stated that as he was reviewing the information provided he noticed a comment under "good faith" that the Division was notified of the problem and in other cases it was non-applicable and asked for clarification. Mr. Verbica stated that often times Division staff will discover the violation on the inspection and other times the facility will notify the Division staff of the problem. Mr. Newman stated that it would be helpful to clarify that if Division staff discovered a violation, it be noted as such. If each violation is noted as being discovered by the Division, citizen, or company that would assist the Board members in understanding the violations.

It was motioned by William Doucette and seconded by Kory Coleman and unanimously carried that the proposed Stipulation and Consent Order to resolve a Notice of Violation issued to Clean Harbors Aragonite Facility dated February 4, 2005, be approved. Gary Mossor abstained from voting.

VIII. Chemical Demilitarization

A. TOCDF Update

Marty Gray stated that TOCDF is continuing to change operations from VX Agent to the Mustard campaign. TOCDF is still in the decontamination phase, where they will be decontaminating the building, equipment, etc. TOCDF has three additional tasks that they will be working on during the changeover period. The first task includes twelve VX hydrolysate containers to be processed. To date, four of the twelve VX hydrolysate ton containers have been handled. The second task involves four-ton containers that contain GA agent that are currently in storage at TOCDF. TOCDF has submitted a permit modification that Division staff has been reviewing to allow TOCDF to process the GA agent. However, TOCDF recently notified the Division to stop reviewing the permit modification. The reason for this decision deals with the international treaty involving deadlines that the United States has to meet for the reduction of its chemical stockpiles. TOCDF will not have enough time to process the GA agent at this time. Instead TOCDF will focus on the mustard campaign in hopes of meeting the treaty deadlines.

John Newman asked how many countries are required to meet the treaty deadline and how many countries will actually meet that deadline. Tom Ball stated that there are 153 countries that have signed the treaty. However, the majority of those countries do not have chemical weapons. The third task deals with secondary waste that is left over from the incineration process and from storage. TOCDF was anticipating processing some of the secondary waste during the changeover time period and throughout the rest of operation of the plant. The Division is in the process of submitting a permit modification for public comment that will have the test plans and operating parameters for processing secondary waste. It is anticipated to be out next week.

Carlton Christensen requested clarification on the four ton containers that contain GA. Mr. Christensen asked even though the GA agent is not considered in the treaty is it considered a high level of risk, as far as exposure, etc. Marty Gray stated that the four-ton containers are the only remaining agent in a bulk quantity at TOCDF. It is a higher risk than secondary waste and is more volatile than the mustard agent. Mr. Gray stated the GA ton containers are securely stored.

B. Dugway Proving Ground's request for a Variance (Board Action Item)

Marty Gray reviewed Dugway Proving Ground's request for a variance to allow for the use of greater than one kilogram of acutely toxic waste in a treatability study. Dugway is requesting that the Board allow treatment of 15 scrap munitions, recovered on the various ranges at Dugway. These munition carcasses may have residual Lewisite contamination. All items have been characterized as non-explosive. A few months ago, a few lewisite rounds were sent to Aberdeen and testing was conducted on how the lewisite could be neutralized, and it was successful. Dugway will bring the neutralization equipment to Dugway and test it with the range recovered soils and scrap metal matrix. The variance request is to exceed the limits in a treatability study because the agent is an acutely toxic waste. Current Utah regulations restrict the treatment of acute hazardous waste under a treatability study to one kilogram, unless a quantity variance is approved by the Board. Dugway is requesting a quantity variance to go above and beyond the one kilogram and treat the 15 scrap munitions.

The public comment period began on July 1, 2005 and ended on July 30, 2005. No comments were received. The Division recommended approval by the Board on this matter.

It was motioned by Kory Coleman and seconded by Gary Mossor and unanimously carried that Dugway Proving Ground's request for a variance be approved.

C. Judicial Consent Decree between the Board and DCD, CAMDS, and TOCDF (Informational Item)

Tom Ball explained the Judicial Consent Decree. Mr. Ball stated that in February 2005, a Notice of Violation (NOV) No. 0411037 was issued to Deseret Chemical Depot (DCD), the Chemical Agent Munitions Disposal System (CAMDS), and the Tooele Chemical Agent Disposal Facility (TOCDF). Both TOCDF and CAMDS are located within the boundaries of DCD. All three facilities have permits and must comply with state and federal laws regarding hazardous waste. One NOV is issued to all three facilities because they all operate under one EPA ID Number. The NOV contained 78 violations that were documented through self-reports from the facilities and during inspections performed by Division staff. A total penalty of \$125,115 has been calculated and agreed upon for settlement of the NOV. All violations cited in the NOV have been corrected or will be corrected through orders in the settlement. TOCDF has requested that this settlement be in the form of a Judicial Consent Decree as has been done in the past. DCD and CAMDS have no objection to this mechanism.

The public comment period for this settlement began on August 16, 2005 and will end on September 14, 2005. It is anticipated that this issue will be brought before the Board for action at the regularly scheduled Board Meeting in October.

Tom Ball clarified that the majority of the violations were self-reported but not all of them. The violations are for a one-year time period covering from September 2003 through September 2004. Board members asked why a year's worth of violations were accumulated. Dennis Downs stated that when dealing with the larger facilities, such as the Clean Harbor Facilities, the Envirocare Facility, and the Army facilities, these facilities handle so much waste and are continually in operation, it would be difficult for Division staff to write up a separate violation for each time a violation occurred and then had to resolve the NOV. The Division has determined that it is important that they have a high presence at those facilities. As such, Division staff members are constantly at these facilities. A number of years ago, the Division came up with a policy, with concurrence from the Board at that time, and EPA, that it would be in the best interest for everyone to save time and efforts to resolve the violations with only one NOV being prepared per year, and finalize only one settlement agreement per year. However, if a major violation does occur at one of these facilities, immediate action can and will be taken by the Division. Also, ongoing resolution of the violations is required by the facilities, i.e., the violations do not just stay pending throughout the year. All violations are tracked and are required to be resolved.

Board members asked if the public had to wait a year to have access to the violation information and is there some other way to ensure the public has knowledge of the violations. Mr. Downs stated that the public does not have such knowledge. When the Division is involved in enforcement action, the information is enforcement sensitive. Only until after the inspection report is completed and a NOV is written does the information become public. Dennis Riding asked if the NOV issued was typical for these facilities. Mr. Ball stated that there are more violations in this NOV than is typically noted. However, the types of violations in the NOV are typical ones, but there are just more of them. A lot of the violations resulted from a September 2004 voluntary stand down at the facility during which multiple violations were found and self-reported to the Division. Carlton Christensen asked if those types of violations are difficult for Division staff to notice when they are visiting the site, and are there lessons learned from this. Mr. Ball stated that one of the violations discovered by the facility, which would have been very difficult for Division staff to discover, was the violation that involved the falsification of monitoring records. The Division staff probably would not have discovered this violation. However, in the normal course of inspecting the facility, Division staff can and will find the same violations that are self-reported by the facility.

Raymond Wixom, Attorney General's Office, presented the concept and process of a Judicial Consent Decree. Mr. Wixom stated that under the Solid and Hazardous Waste Act, the Board is given the power to oversee and cause compliance with the Act itself. The Legislature has stated that this Board has the authority to enforce compliance through administrative procedures or through judicial procedures. The Board has a choice, depending on what the circumstances require. Usually what happens, because the Board has delegated to the Executive Secretary the authority to issue Notices of Violations (NOV) to facilities, the NOV is issued as an administrative document. The NOV will often be accompanied with a compliance order. All of that is administrative, and an informal proceeding. Neither this Board nor the Executive Secretary has the authority to impose administrative penalties. When the facility receives its NOV, it has the opportunity if it chooses to do so, to request agency action. If the facility requests agency action, the Executive Secretary along with Division staff, meet with the facility and

address their concerns regarding the NOV. After all parties have agreed, a Stipulation and Consent Order is prepared that administratively resolves the entire matter. If the facility does not agree to resolve the entire matter administratively, then the State has no choice but to bring legal action against the facility, i.e. to sue the facility.

Another portion of the regulatory program is the Federal Resource Conservation and Recovery Act (RCRA), which has a provision that states that citizens can bring lawsuits against facilities under certain circumstances. The provisions of RCRA state that citizens cannot bring judicial action if either the Federal EPA or the State of Utah has commenced its own court actions dealing with those violations. What that means is that sometimes a facility is motivated to state, as a condition of settlement that they would like to have the matter resolved through a Judicial Consent Decree. The facility wants the protection of the Judicial Consent Decree so it does not have to worry about someone suing the facility. That is what is taking place in this matter. The facility wants that protection, so it is requesting that the Board approve having a civil complaint filed, that ultimately will be resolved by a judge signing an order, stating how the violations are to be solved. The Board makes its decision, and the judge does not get in the way of the Board's decision until after the Board has taken care of what it feels is appropriate in the case. The Attorney General's office does not go to court until the Board is satisfied.

Raymond Wixom clarified that part of the process is the Board directing the Attorney General's Office to lodge a complaint with the Court, and after the public comment period is done, etc., the Attorney General's Office will ask the Court to sign the Judicial Consent Decree. Carlton Christensen asked if the judge can act independently or does he have to react to the State's complaint in the Judicial Consent Decree. Mr. Wixom stated that the judge is in the position that can cause concern, as the judge can insist on more evidence, etc. The judge is not bound without any ability of his or her own to get involved in the process.

IX. Other Business

Dennis Downs stated that previous discussions included Board members touring the Deseret Chemical Depot, Envirocare Facility and the two Clean Harbors Facilities. Mr. Downs stated that this time of year is an ideal time for those tours to be conducted. Present Board members were polled to see if they were interested in the tours. (Board members not present will be polled to see if they are interested in touring these facilities.)

The next meeting of the Utah Solid and Hazardous Waste Control Board will be held on October 13, 2005, at 1:00 p.m. in the DEQ Conference Room 101, located at 168 N. 1950 W., (Bldg. #2), SLC.